IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 4.2.2002

CORAM

THE HONOURABLE MR JUSTICE P. SHANMUGAM
AND
THE HONOURABLE MR JUSTICE P. THANGAVEL

WRIT APPEAL NO.73 OF 1999 and C.M.P. Nos.519 of 1999 and C.M.P. Nos.6149 to 6150 of 1999

The Tamil Nadu Tourism
Development Corporation
Ltd., rep. by its
Managing Director
Tamil Nadu Tourism
Development Corporation
Ltd., 25, Dr.Radhakrishnan
Salai, Mylapore, Chennai-4. ... Appellant

Vs.

1.J.Haridoss
2.D.C.Madhusudanan ... Respondents

Appeal under Clause 15 of the Letters Patent against the order
passed by this Court in W.P.No.13512 of 1996 dated 7.12.1998.
For Appellant : Mr. S.Ravindran
For Respondents : Mr. M.Venkatachalapathy,
Senior Counsel.

: J U D G M E N T

(Judgment of the Court was delivered by P.Shanmugam, J.)

The first respondent before the learned single Judge is the appellant in this appeal. One J.Haridoss, petitioner in the writ petition was the Assistant Manager posted as Manager in charge at Hotel Tamil Nadu Tourism Development Corporation Limited. Twelve charges were framed against him on 27.11.1995. After considering his explanation and holding an enquiry, the Enquiry Officer found him guilty of all the charges as per his finding dated 9.4.1996. After giving a show cause notice, the first respondent in the writ petition issued the impugned order of punishment of dismissal from service dated 31.8.1996. The said order was challenged in the writ petition. Simultaneously, he had also preferred an appeal before the Board of Directors

of the Tamil Nadu Tourism Development Corporation Limited. The learned Judge found that the conclusion of the Enquiry Officer was based on cogent and appropriate reasons in detail and therefore upheld the findings. However, the learned Judge thereafter went into the proportionality of the punishment and held that the charges proved do not warrant a capital punishment and the punishment is irrelevant and highly disproportionate to the gravity of the proved charges. On the basis of this conclusion, the learned Judge thought it fit to impose a lesser punishment of stoppage of two annual increments but with cumulative effect and the writ petition was allowed in part by setting aside the impugned order of punishment and directed to reinstate the petitioner in service with continuity of service with back wages. Aggrieved by this judgment of the learned Judge, the above appeal is preferred.

2. The main submission of the learned counsel for the appellant is the proved charges viz., Nos.3,4,5 and 6 are serious in nature relating misappropriation. Therefore it is within the province of the employer to decide the quantum of punishment and it cannot be interfered with under Article 226 of the Constitution of India. He further submits that irrespective of the quantum of misappropriation, the act of the first respondent deserves only the punishment of dismissal and ought not to have been disturbed. In this context, he referred to number of judgments of the Honourable Supreme Court and principle laid down thereunder.

3. Mr.Venkatachalapathy, learned Senior Counsel appearing on behalf of first respondent submitted that this Court has got ample jurisdiction to go into the question of the disproportionality of the punishment to the charges levelled and proved and therefore, the order of the learned Judge is justifiable. He referred to the charges and its finding to persuade us to hold that the charges are not serious, warranting the punishment of dismissal from service.

4. We have heard the learned counsel for both and considered the matter carefully.

5. Twelve charges have been framed against the first respondent by the memorandum of charge sheet dated 27.11.1995 and all the charges except charge No.12 held to be proved by the Enquiry Officer and the Appointing Authority. The learned single Judge before whom the matter was argued upheld the said view and stated in paragraph-21 as follows:
" The Enquiry Officer found that all the above charges have been proved and to come to such a conclusion, the Enquiry Officer has given cogent and appropriate reasons in detail. Such findings are based on the strength of evidence and records placed before him. A perusal of the findings of the Enquiry Officer goes to show that they are well considered findings and supported by material evidence. Therefore, it cannot be challenged saying that such findings were given out of bias." (emphasis ordered)

6. Earlier, the learned Judge had also considered the opportunity and the learned Judge found that the appointing authority or enquiry officer and

passing of final order of dismissal had been done only by competent authorities and further rejected the claim of the petitioner of bias stating that the petitioner had not fully participated in the enquiry was not in any way prejudiced in the conduct of the enquiry and the first respondent cannot have any grievance over the appointment of the enquiry officer on the ground that he is an outsider and such a contention has to be rejected. On the ground of fair opportunity also, the learned Judge in paragraph-16 has stated as follows:-

" Therefore from all these aspects it is very clear that the petitioner herein has been given every opportunity to put forth his case in the enquiry proceedings. Therefore, I see every force in the contention of the first respondent that it is not open to the petitioner to contend that he was not given adequate opportunity to vindicate his innocence."

7. So far as the provisional conclusion and the findings of the enquiry officer, the learned Judge has said that the first respondent (Management) has applied its mind on the charges and his explanation vis-a-vis the findings of the enquiry officer. Therefore, insofar as the opportunity before the enquiry officer and the Management and the nature of enquiry and the order, the first respondent herein cannot have any grievance and in any event will not be permitted to raise any ground on that score in this appeal.

8. Therefore, the only question arise for consideration in this appeal is whether this Court under Article 226 of the Constitution of India can go into the proportionality of the punishment and if so, whether this Court has jurisdiction for reduction of punishment in this case.

9. In U.P. STATE ROAD TRANSPORT CORPORATION V. BASUDEP CHAUDHARY AND ANOTHER reported in 1997-XI SCC 370, the Honourable Supreme Court dealt with an award passed by the labour court and held that although in that case, it was an attempt to cause a loss of Rs.65/= to the Corporation, it was serious in nature and the punishment of removal was held to be justifiable and not disproportionate. Their Lordships has also held that the High Court was error in interfering with the award of the labour court and in substituting the penalty of censure for removal from service on the view that there was only an attempt to cause loss.

10. In JANATHA BAZAR V. SECRETARY reported in 2000(7) SCC 517, the Honourable Supreme Court held that the labour court by invoking under Sections 11-A and 10 cannot substitute the penalty imposed by the employer. In that context, their Lordships has held as follows:

" Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled. (Re: Municipal Committee, Bahadurgarh vs. Krishna Behari)"

11. In UNION OF INDIA VS. G. GNANAYUTHAM reported in 1997(7) SCC 463, their

Lordships held that in the absence of any fundamental freedom is affected, there is no need to go into the question of proportionality. In that case, their Lordships held that as to irrationality, there is no finding by the tribunal that the decision is one which no sensible person, who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in "outrageous" defiance of logic. By referring to B.C. CHATURVEDI V. UNION OF INDIA, their Lordships held that unless the court/ tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed. It is only in very rare cases as pointed out in B.C.Chaturdedi case that the court might to shorten litigation think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority.

12. Per contra, the learned counsel for the first respondent referred to the judgment of B.C.CHATURVEDI V. UNION OF INDIA AND OTHERS reported in 1996(1) LLJ 1231, wherein their Lordships have taken a view that after referring to the review of the legal position that the disciplinary authority and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. However, the learned counsel emphasized the following passage:-

" If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would, appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

13. In this case, the learned Judge after having found that the charges have been established, went on to consider the nature of proved charges even though they are 11 in number and held that the proved charges do not warrant such capital punishment and in any way such punishment is irrelevant and highly disproportionate to the gravity of the proved charges. The learned Judge has taken into account the amounts involved to hold that the gravity of charges are not so serious to award major punishment. Insofar as the amount is concerned, we have earlier referred that the amount is not relevant in considering the charges. What is relevant is the nature of charge as such whether it is small or big.

14. In this case, charge Nos,3,4,5 and 6 are charges relating to misappropriation. Charge No.3 is that the first respondent had claimed Travelling Allowance himself, without the sanction of the competent authority for the tour and without the counter signature, a sum of Rs.2092/= and thereby committed a misconduct.

15. Charge No.4 is that he claimed a sum of Rs.3936.15 towards HRA, CCA, EB and water charges for the months from July, 1994 to March, 1995, though he is not eligible for the said claim, since he has unauthorisedly occupied the vacant rooms of the Corporation itself and thus committed misconduct.

16. Charge No.5 is that he had withdrawn a sum of Rs.4000/= by self cheque and had not accounted for such amount with vouchers.

17. Charge No.6 is that he has given a cheque for Rs.1635/= to one Thiru Rajamani and the same was encashed by him and at the same time, he had entered the payment in cash book also and thereby he had motive for misappropriating the said amount.

18. Even though there are 11 charges, which according to the appellant are all serious in nature, four of the 11 charges related to misappropriation. We are taken through these findings so as to contend that these charges are serious in nature.

19. Charge No.2 related to the officer's claim of Rs.1,095/80 towards his trip from Coonoor to Madras for a single journey, using forged xeroxed bill for a second claim for the same journey, thereby cheating Corporation which is a misconduct under S.R.5.1.2(c). The explanation of the officer is that the double drawal of the bill is purely by oversight and it was not intentional and that he had no proper assistance. The finding is that the auditors have pointed out that the Manager of Coonoor Unit has claimed travelling expenses of Rs.1,095/80 twice for the same travel. Claiming twice for the same travel is unhealthy and amounts to cheating the Corporation. The officer had admitted that he had made the second claim for only Rs.95/80 and it was ultimately held that the charge is proved to the extent mentioned above. On the charge No.3, we find that the first respondent is said to have obtained oral sanction for his tour and he has withdrawn the amount twice for the same journey on his own claim. In the absence of sanction for the amount, we find that the charges had been established on the admitted withdrawal, which are of of serious in nature.

20. Charge No.4 says that he had been occupying the hotel room itself and admittedly also claimed HRA, CCA and EB as if he has been staying outside. It has been found that there is no record to show that he was staying outside, whereas his stay in hotel has been admitted. Therefore, this charge he had unauthorisedly occupied the vacant rooms during the stay period and he as well claimed HRA, CCA etc has been clearly established.

21. Regarding Charge No.5 also, it is seen that he had drawn a sum of Rs.4000/= but admittedly had not provided
vouchers in support of the claim of Rs,4000/=.

22. Charge No.10 is that he had not remitted the collection amount of Rs.2,014/75 collected on 1.8.1995 from the total collection of Rs.6,798/75 and also the collection amount of Rs.2,647/50 on 2.8.199 5 and Rs.1,714/50 on 3.8.1990 into the bank and handed in BE2 voucher thereby committed misconduct as per S.R.5.1.2(g). The Enquiry Officer found that in the light of the

evidence, the charge is held proved, after a detailed discussion on the material documents and evidence. The Enquiry Officer found that the activities of the delinquent in making delayed remittance amounts to misappropriation and contrary to the clear instructions in the Accounts Manual, which all the employees are supposed to be conversant with, wherein it is stated that cash collection should be remitted in the bank on the same day or the next day. The defence of the officer that he had obtained permission to utilise the daily collection for other expenditure was examined by the Enquiry Officer. No document permitting the officer to utilise the daily amount has been produced and he had not cross-examined Thiru Raj Kumar on this question. Therefore, the utilisation of the daily collection for payment is irregular and has resulted in short remittance.

23. Charge No.11 relates to the officer's entry to the hotel while he was on medical leave and his drawing of Rs.2,000/- after putting his signature in three blank cheques. The defence of the officer is that he had to go to Madras and that though he was not bedridden, his doctor has advised him to take complete rest by staying away from his working spot. Therefore, while he was at rest in his house, he was informed that the staff are suffering from want of funds to disburse the salary and in the interest of the organisation, he went over to the office and signed only one blank cheque and not as stated in the charge. The Enquiry Officer found that it is not denied that the officer was on leave from 22.8.1995 to 15.9.1995. It is beyond comprehension how an officer on leave, that too on medical grounds, could undertake administrative functions. He had not examined the Regional Manager who directed him to go from Madras to Ranipet to sign the blank cheques. An officer, while is on leave, is precluded from discharging his official function, whereas, he has signed a blank cheques during his leave period. Therefore, it was concluded that it is established from the evidence that the action of the officer in signing the blank cheques, drawal of a cheque for salary and issue of a cheque for Rs.2,000/-, purposes of which is not mentioned, is irregular and hence the charge is held proved.

24. The punishing authority namely the Managing Director found that out of the 12 charges, Charge Nos.1, 3, 4, 10 and 11 are serious in nature and that they show the habitual tendency of the appellant to ignore the rules. According to the impugned order, there has been clear breach of the rules under S.R.5.1.2.(g). Charge Nos.3, 4, 5 and 6, which are under S.R.5.1.2.(p),(g) and (c), related to misappropriation of the funds of the Corporation with fraudulent intention These charges are very serious in nature warranting severe action. Taking note of the findings of the Enquiry Officer as well as the explanation to the charges and the defence statemen, the Managing Director was of the view that the only order that could be passed is to dismiss the appellant from service.

25. After going through these charges, the findings and conclusions of the Enquiry Officer and the Competent Authority and also the views of the learned single Judge, we do not find that this is a rare case so as to hold that the findings are shockingly disproportionate to one's conscience in order to interfere by invoking Article 22 6 of the Constitution of India. Applying the ratio laid down by the Supreme Court in the decisions referred to earlier, we

are of the view that the order of the learned single Judge cannot be sustained.

26. For all the reasons stated above, the writ appeal is allowed and the order of the Learned Single Judge is set aside. No costs. Consequently, the connected CMPs are closed.

Index: Yes
kb/ab 04.02.2002
To
The Managing Director
The Tamil Nadu Tourism Development
Corporation Ltd.,
25,Dr.Radhakrishnan Salai
Mylapore, Chennai-4.

P. SHANMUGAM, J.
AND
P. THANGAVEL, J.

W.A.NO.73 OF 1999

04.02.2002